

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SYDNEY BROOKE ROBERTS, et al.,
Plaintiffs,
v.
SACRAMENTO HOUSING &
REDEVELOPMENT AGENCY, et al,
Defendants.

No. 2:22-cv-01699 DJC AC PS

FINDINGS AND RECOMMENDATIONS

Pending before the undersigned is pro se plaintiffs' motion for a temporary restraining order (ECF No. 26). Based on the analysis below, the undersigned recommends that the motion be DENIED.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs, proceeding in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a)(1), filed this case on September 27, 2022. ECF No. 1. Pursuant to the screening process associated with IFP status, their initial complaint was rejected and plaintiffs were given multiple opportunities to amend their complaint; ultimately plaintiffs' Third Amended Complaint ("TAC") was approved for service. ECF Nos. 3, 5, 6, 7, 8, 9, 11 (TAC).

Defendants moved to dismiss on April 14, 2023. ECF No. 21. That motion is set to be heard on May 24, 2023. Id. On April 25, 2023, plaintiffs moved to file a Fourth Amended

1 Complaint. ECF No. 23. Pursuant to Local Rule 230(c), defendants’ response to that motion is
 2 due on May 8, 2023. On April 29, 2023, plaintiffs filed an Emergency Motion for Preliminary
 3 Injunction (ECF No. 25); per the local rule, defendants’ opposition to that motion is due on May
 4 15, 2023. Pending now is plaintiffs’ Motion for Temporary Restraining Order (ECF No. 26),
 5 which was brought on May 1, 2023.

6 The operative Third Amended Complaint brings causes of action under Title II of the
 7 Americans with Disabilities Act, the Fair Housing Act, Sections 504 and 508 of the
 8 Rehabilitation Act, and the Fourteenth Amendment. ECF No. 11 at 4. Plaintiffs allege that
 9 defendants have violated the laws with respect to their housing and their requested
 10 accommodations related to various disabilities. See generally, ECF No. 11.

11 **II. MOTION FOR TEMPORARY RESTRAINING ORDER**

12 Under Rule 65, Federal Rules of Civil Procedure, “[t]he court may issue a temporary
 13 restraining order without written or oral notice to the adverse party” only if “specific facts in an
 14 affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or
 15 damage will result to the movant before the adverse party can be heard in opposition.” Fed. R.
 16 Civ. P. 65(b)(1). Obtaining ex parte relief under Rule 65 is limited to situations where notice to
 17 the adverse party would likely prove useless. See Reno Air Racing Ass’n v. McCord, 452 F.3d
 18 1126, 1130 (9th Cir. 2006) (citing cases).

19 The legal standards for obtaining a temporary restraining order are essentially identical to
 20 those for obtaining a preliminary injunction. See Cal. Indep. Sys. Operator Corp. v. Reliant
 21 Energy Servs., Inc., 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001); Lockheed Missile & Space
 22 Co., Inc. v. Hughes Aircraft Co., 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). “The sole purpose
 23 of a preliminary injunction is to ‘preserve the status quo ante litem pending a determination of the
 24 action on the merits.’” Sierra Forest Legacy v. Rey, 577 F.3d 1015, 1023 (9th Cir. 2009) (quoting
 25 L.A. Memorial Coliseum Comm’n v. NFL, 634 F.2d 1197, 1200 (9th Cir.1980)).

26 Here, plaintiffs have not articulated a legal or factual basis for a temporary restraining
 27 order. Plaintiffs argue that in the absence of a temporary restraining order they will “continue to
 28 suffer” the irreparable harm that they have been suffering for the past year, and that they will


1 “continue” to experience due process violations. ECF No. 26 at 5. Plaintiffs state that because of
2 defendants’ actions related to their housing, they are “currently homeless.” ECF No. 26 at 6.
3 Because the actions allegedly resulting in plaintiffs’ homelessness happened before the motion
4 was filed, there is no anticipated action on the part of defendants for this court to “temporarily
5 restrain” in order to “preserve the status quo” of plaintiffs’ housing situation. Thus, there is no
6 basis for the court to issue a temporary restraining order at this juncture.

7 III. CONCLUSION

8 Accordingly, it is hereby RECOMMENDED that plaintiffs’ motion for a temporary
9 restraining order (ECF No. 26) be DENIED.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a
14 document should be captioned “Objections to Magistrate Judge’s Findings and
15 Recommendations.” Any response to the objections shall be filed with the court and served on all
16 parties within fourteen days after service of the objections. Local Rule 304(d). Failure to file
17 objections within the specified time may waive the right to appeal the District Court’s order.
18 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57
19 (9th Cir. 1991).

20 DATED: May 3, 2023

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22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
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